Independent Human Rights Act Review (IHRAR) - Call for Evidence

Submission by Southall Black Sisters

12 March 2021

Southall Black Sisters

1. Since 1979, Southall Black Sisters ('SBS') has operated a specialist advice and advocacy centre for black and minority ethnic (BME) women fleeing gender-based violence and related matters. We are nationally and internationally renowned for our work which includes advising, representing, counselling and providing other practical support to BME women and campaigning on their behalf. We also undertake high profile policy and research work and strategic litigation. The bulk of our work is directed at assisting women and children to obtain effective protection and assert their fundamental human rights. Our advice and casework ranges from dealing with one-off enquiries, to undertaking mid to long-term casework which covers a number of overlapping legal and welfare issues. Our work by its very nature addresses issues of multiple or intersectional discrimination, involving the simultaneous experience of race, gender and other forms of inequality.

This Submission

2. We make this submission to place on record our deep concern about the scope of the review into the Human Rights Act (HRA) 1998. The call for evidence purports to examine the framework and operation of the HRA but we are concerned that the review's extremely technical and narrow terms of reference (focussing on the relationship between domestic courts and the ECHR and the boundaries between judicial and executive power) fails to give any consideration to the positive impact of the HRA in protecting individual rights and in making human rights a reality, particularly for the most vulnerable in our society. We strongly believe that the review must not be used as a veil to undermine the HRA to the extent that it ceases to have any value in the lives of ordinary people and in our work to progress democratic governance. For this reason, we feel compelled to make this submission setting out why the HRA is so integral to our work and why it must not be diluted to serve the interests of the government of the day. The HRA is a vital legal tool by which to challenge misuse of institutional power and to ensure that the most disadvantaged and disenfranchised groups in our society can assert their fundamental rights. It has also given us a language by which to challenge wider societal values and traditions that seek to limit fundamental freedoms and rights. In this respect,

the HRA has taken on specific significance for the women we serve who are all too often relegated to the margins of society, without a voice or power to challenge the daily injustices they face in their families, communities and the wider society.

3. At a time of immense political and social upheaval, we urge those conducting the review not to pander to the political imperatives of populism or authoritarianism by limiting the scope of the HRA and with it, substantive and procedural rights to equality and justice. Any move in this direction will, in our view, not only be a betrayal of the most vulnerable in our society who need protection, but a betrayal of those who sacrificed their lives to uphold the very values of democracy - equality, the rule of law, free speech, privacy and human rights that are under threat globally.

Why the HRA matters in the work of SBS

4. The UK opted to pass the HRA which clearly incorporated the European Convention on Human Rights (ECHR) recognising its importance in ensuring that the rights of the citizen are upheld and the state is held to account where it has acted unlawfully or abused its power.

5. The HRA been critical in our attempts to pursue justice and freedom on behalf of BME women who represent some of the most disadvantaged groups in society. A large part of our work focuses on addressing issues of gender-based violence - domestic and sexual abuse and the more culturally specific forms of harm such as honour killings and forced marriage and related problems of homelessness, poverty, insecure immigration status, mental health and racism. Many of the women that we work with turn to outside agencies like ours and the formal legal and welfare system for protection and support precisely because of their experiences of gender-based discrimination and inequality within family and community institutions. The majority of the women who contact SBS recount experiences of being compelled by community and religious leaderships and family elders to resolve marital and family disputes informally, which usually results in women reconciling with abusive partners without reference to risk or their need for protection and redress.

6. Through a combination of casework and campaigns, we have demanded that the state intervenes in its protective capacity, especially in the family affairs of minority communities when domestic abuse and other forms of harm are disclosed and where arguably the greatest violations of women and children's rights occur. This has not been easy give that the state prefers to listen to the voices of powerful unelected, patriarchal

male and increasingly conservative religious leaderships who claim to represent minority interests but who in reality seek to define community values and monopolise resources in order to maintain their own power and status. Needless to say, this leadership has always acted to the detriment of women's rights and those of other vulnerable sub-groups. In a context where many women are powerless in ensuring that they are adequately supported by state institutions in asserting their fundamental human rights, any vacuum created by diminishing the influence of the HRA is even more likely to be filled by unaccountable community representatives seeking to dispense 'justice'. Any limits on the scope of the HRA will in our view, lead to an entrenchment of regressive attitudes and a widening of gender, race and class inequality. It will also undo the tremendous work that has taken place to embed a human rights culture in BME communities.

7. The HRA has also been critical in allowing us to challenge the devastating impact of draconian and often discriminatory and punitive statutory policies and responses that are detrimental to BME women. This is also why, for this group of women, the law and the HRA in particular, is a fundamental tool of justice and empowerment. It is critical that the rights that we should all enjoy are not dependent on the capriciousness of elected politicians and regressive community leaderships.

8. We set out below the ways in which the HRA and key ECHR rights have played a significant role in our day-to-day advocacy, legal work and in third party interventions that we have made where cases have raised issues of wider public importance. Although, we also want to stress that in our experience, the courts have only intervened when there has been a complete failure on the part of public bodies to fulfil their obligations to protect the basic rights that we should all enjoy. The key rights implicated in our work are:

- Right to life (Article 2 ECHR)
- Right not to be subject torture or inhuman and degrading treatment (Article 3 ECHR)
- Right to be free from slavery and forced labour (Article 4 ECHR)
- Right to a fair hearing (Article 6 ECHR)
- Right to respect for private and family life (Article 8 ECHR)
- Right to freedom of thought, belief and religion (Article 9 ECHR)
- Right to freedom of expression (Article 10 ECHR)
- Right to non-discrimination in respect of convention rights (Article 14 ECHR)

Day to day advocacy

9. We have invoked human rights in a range of cases from those that require a challenge to local authorities in respect their safeguarding obligations to vulnerable adults and children to those that require challenging poor police practice such as data sharing with the Home Office and the adoption of discriminatory policies by immigration caseworkers and public bodies working in the sphere of education and the law. Without such challenges usually based on the HRA, our fear is that BME women in particular would lag far behind in achieving equality compared to women in the wider society.

10. By routinely invoking the HRA in our day-to-day advocacy work, we are often able to obtain positive outcomes for women and improve policies and practices without having to necessarily resort to legal proceedings. The cause of action created by s7 of the Human Rights Act 1998 means that we are able to focus the minds of public bodies and local authorities on the possibility of legal action, in order to persuade them to act in lawful and proportionate ways and to adopt good practice that is compatible with human rights law and principles. The following are some examples of how we have used the HRA in our day-to-day advocacy:

Social Services and the Children Act 1989

11. We frequently rely on the HRA in written and verbal representations to social services to compel them to adhere to their safeguarding duties under the Children Act 1989. Section 17 of the Children Act 1989 sets out local authority duties towards vulnerable and destitute women with children, including those subject to the 'No Recourse to Public Funds (NRPF), who they are legally obliged to support. Without such support, vulnerable women and children would be left in situations of escalating abuse and without protection. Evidence shows that domestic abuse is one of the top three reasons for homelessness amongst women and children. A 2015 report by Oxford University highlighted the fact that domestic violence was a key element in many referrals of women and children with NRPF to local authorities for support. It noted that relationship breakdown, including domestic violence, often led to previously stable circumstances deteriorating. Yet despite their statutory responsibilities and the growing need to support families with NRPF due to domestic violence, our experience and that of many others is that local authorities (children's social care specifically) regularly fail to discharge their legal obligations to vulnerable families.

12. There is considerable inconsistency in local authority practice across the UK in respect of the support that is given to migrant women and children; many of whom are left facing

serious abuse, severe hardships and trauma due to a refusal to help. Our extensive casework has highlighted some of the most common themes to emerge in respect of the failure of children's social care services to meet their safeguarding needs. These include: • outright refusal to assist women and children with a failure to provide reasons why; • failure to undertake risk assessments; • providing unlawful and incorrect immigration advice; • attempting to mediate with abusers for the purpose of returning women and/or their children to their abusive partners; • threatening to only accommodate children and not their mothers - thereby separating mothers from their children; • insisting that women and children return to their country of origin irrespective of the circumstances and risks involved; • forcing women to return to originating boroughs where they face ongoing risk; • making inappropriate and judgemental comments and harassing women to pursue options that place them and their children in danger or work against their interests. • passing responsibility to other boroughs thereby causing delays and anxiety. On the occasions that local authorities refuse to support vulnerable and destitute women and children, even where there is a clear duty to do so, we have no choice but to invoke or initiate legal action, which is now a frequent occurrence. Many of our users have strong cases against public authorities acting unlawfully. Between July and September 2019 for instance, SBS warned various local authorities of the possibility of bringing legal challenges or began legal proceedings on 18 occasions for refusing to provide assistance to abused women with children, particularly those with insecure immigration status and NRPF.

13. We constantly have to remind social services that where there is a possibility of a breach of ECHR rights, it must conduct a human rights assessment as well as a 'child in need' assessment. We have also argued that a failure to provide accommodation and assistance to both a child in need and their mother, where that may result in both becoming destitute or street homeless, would involve a breach of Article 3 ECHR. In the face of social services' attempts to use s20 to 'accommodate' children with the 'consent' of their parents, we have argued that it would entail an unjustified and disproportionate interference with Article 8 ECHR. In our experience, in cases involving such women, public bodies often fail to apply the relevant law correctly or to have sufficient regard to the material facts when assessing needs. Many of our cases are settled in favour of our users just prior to the commencement of legal proceedings.

14. The pattern of failure highlighted in our casework is also echoed by many organisations such as the Latin American Women's Right Services. (LAWRS) They reported on a recent case involving a woman had cause to challenge a local authority for its failure to provide interim accommodation to a migrant woman and her child who was subject to abuse and

was destitute and surviving solely on food vouchers provided by LAWRs. The woman was married to an EU worker who has settled status but he failed to regularise her status and that of her son.

15. Having exhausted her savings from work, she approached her local authority for interim housing and subsistence support pending her application for settlement. The local authority refused to assess the needs of the woman and her child and in doing so failed to ensure that her child's welfare was safeguarded. Despite the urgency of the family's needs, three weeks after the request was made and despite chasing correspondence, the local authority had still not completed the assessment or made any interim arrangements for safeguarding the child. Legal proceedings against the local authority were commenced by the woman based on the failure to fulfil its duties under s17 of the Children Act and for a breach of Article 3 ECHR. This led to a successful outcome without having to resort to the courts.

Legal Aid and Exceptional Case Funding

16. We do not provide legal advice, but instead provide practical assistance and facilitate critical access to specialist, publicly-funded legal practitioners where necessary. In many of our cases, time is of the essence and any delays in obtaining legal advice and representation can be potentially damaging and life threatening. Yet we struggle daily to obtain access to high quality legal aided advice and representation due to a number of factors: severe public spending cuts; cuts to specialist services and the legal aid changes that have taken place, in particular, those that took effect in April 2013 under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO'). Many of our users have as a result been negatively impacted by the following continuing problems caused by LASPO: severe lack of availability of quality and specialist legal advice (with a focus on immigration and family law); continuing issues around the domestic violence gateway; unrealistic financial thresholds and inadequate eligibility assessments; ongoing difficulties with the Exceptional Case Funding regime and unrepresented perpetrators cross-examining victims of domestic abuse. All of these matters by their very nature contravene Articles 6, 3 and 8 ECHR.

17. It is precisely the obligation under Article 6 ECHR and the requirement under section 3 of the HRA that has compelled the government to provide a safety net by way of s10 of LASPO. S10 provides that civil legal aid services of a kind not specified in LASPO is nevertheless to be provided if an exceptional case determination is necessary to make the services available to the individual because failure to do so would be a breach of the individual's Convention rights within the meaning of the HRA. This has led to the

establishment of the Exceptional Case Funding (ECF) scheme. This scheme, although complex and difficult to access, has now become a critical safety net and is utilised by us on daily basis because without it, many of the women we work with would be left unprotected. The point we wish to emphasise is that without the HRA there would be no ECF and without the ECF, some of the most vulnerable and at risk women and children would have no access to the formal justice system.

Police super-complaint (2018): Data-sharing between the police and the Home Office regarding migrant victims of crime

18. In December 2018, SBS and the organisation, Liberty, jointly submitted the first ever police super-complaint which raised serious concerns regarding the policies and practices of all police forces in England and Wales with respect to the treatment of victims of crime who have insecure immigration status. Our particular focus was on the sharing of victims' data to the Home Office, for the purpose of immigration enforcement. We drew attention to what we regard as an entrenched culture of prioritising immigration control over public safety and the fair treatment of victims. We asked that this issue be investigated on the grounds that it was arguably unlawful and caused significant harm to the public interest.

19. In the super-complaint, we set out how the practice of sharing data on victims and witnesses with the Home Office for immigration enforcement purposes deterred vulnerable victims of domestic abuse who have insecure status from reporting their experiences and from seeking protection. We also argued that the practice undermined the confidence of such victims and witnesses in the police and wider criminal justice system. A direct result of such data sharing, we submitted that victims and witnesses are less likely to report serious crimes to the police. For this reason, we stated that there must be significant and meaningful safeguards that currently do not exist to prevent data sharing from being used in a way that results in a breach of the rights of victims seeking to, or reporting, the types of crimes to the police.

20. We stated that the police as a manifestation of the state had specific duties towards victims and witnesses. The police play a central role in ensuring that the UK discharges the burden of its positive obligations under Articles 2, 3 and 4 ECHR. Part of the role of the police is to receive and investigate reports of serious crimes which would fall within the ambit of those articles. If that is not done effectively, the UK will be in breach of its positive obligations under Articles 2, 3 and 4 ECHR. Article 2 ECHR for instance, imposes both a substantive obligation to protect the right to life and a procedural duty to investigate the taking of life on the State. Article 3 ECHR is the prohibition on torture and inhuman and degrading treatment. In common with Article 2, it places a positive duty on

the State to ensure where possible that these forms of suffering are not endured and a procedural obligation to conduct an effective investigation if such conduct is reported. Article 4 ECHR prohibits slavery, servitude and forced labour. Again, the State has a positive obligation to prevent the trafficking of human beings, which includes penalising and prosecuting traffickers.

21. We also argued that despite the arguable powers to share data, such sharing may be unlawful under Articles 8 and 14 ECHR, and Articles 7, 8 and 21 EU Charter of Fundamental Rights (EU Charter). The super-complaint stated that the provision of an individual's data to a third party engaged an individual's right to respect for private and family life under Article 8 ECHR and Article 7 of the EU Charter. In addition, we argued that Article 8 of the EU Charter confers a specific "right to the protection of personal data" which needed to be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Whilst accepting that these are qualified rights and interference with them can, in some circumstances, be lawful, we suggested that for many victims and witnesses, Article 14 ECHR and Article 21 EU Charter, which prohibit discrimination, may also be engaged, especially if such data sharing was based on an individual's race or national origin. We argued that it is clear that Article 8 ECHR and Article 7 of the EU Charter are engaged and that this is an interference with these rights which is neither proportionate or justifiable and potentially gives rise to a violation of their privacy.

22. The outcome of the super-complaint is that Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), along with the College of Policing and the Independent Office for Police Conduct, upheld our complaint on the grounds that they were genuine concerns and questions about:

- The deterrence effect of data-sharing between the police and Home Office in that some migrant victims or witnesses of crime would fear going to the police, particularly victims of domestic abuse;
- Inconsistencies and confusion across police forces about how to deal with victims and witnesses who have insecure immigration status
- Significant harm caused to the public interest by a victims' inability to seek justice and offenders not being identified or reprimanded.

23. This outcome and the need to move towards a more just, proportionate and balanced victim centred approach to vulnerable victims and witnesses of crime would not have been possible without our extensive use of the HRA. As a direct consequence, chief

constables across England and Wales have been advised to immediately stop sharing information on domestic abuse victims with Immigration Enforcement. The Home Office has also been instructed to review the legal framework and policy underpinning the matters raised in the super-complaint with the aim of providing clarification to the police service, other public services and immigration authorities on priorities regarding all migrant victims and witnesses of crime with insecure immigration status. Our hope is that the review will establish safe reporting mechanisms for all migrant victims and witnesses, including those with insecure immigration status, who need to access the police service but more widely other statutory services too. The original super-complaint submitted by SBS and Liberty is available here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767396/Super-complaint_181218.pdf
The inspectorate's report, Safe to Share? Is available here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf

Legal proceedings

UUK guidance note on gender segregation in universities (2013)

24. On November 22 2013, University UK (UUK) a governing body for universities published a guidance document titled 'External speakers in higher education institutions.' Its aim was to help universities consider the various issues that arise when inviting external speakers to appear on campus, including the issue of gender segregation. The guidance was designed to ensure that the 'freedom of speech' of those with 'genuinely held religious beliefs, was not 'curtailed unlawfully'. However, in effect, the guidance amounted to an endorsement of sex discrimination since the practice of gender segregation was also widely being imposed on women from BME backgrounds. SBS along with others expressed serious doubts about the new guidance to universities since it sought to legitimise the practice of the segregation of the sexes at universities. We noted that gender segregation was becoming a widespread trend at many public events in universities.

25. The guidance prompted SBS to challenge the UUK's guidance by way of a Pre-Action Protocol letter on the grounds that it would have had a disproportionate impact on women who due to their cultural and religious backgrounds already struggle to assert their right to gender equality, to freedom of expression and the right to participate in public life.

26. In our Pre-Action Protocol letter, we pointed out that the guidance contravened sex equality and human rights law. By allowing gender segregation at public university events, we submitted that the UUK was not only failing to respect its legal obligations, but also violating domestic and international law. We demonstrated how the UUK had failed to undertake a balancing exercise when taking account of Articles 9 and 10 ECHR concerning the qualified right to manifest religious beliefs and freedom of expression against Article 14 ECHR concerning non-discrimination. We submitted that the law requires public bodies such as UUK and the universities it is advising to undertake a balancing act: a speaker's Article 9 and 10 rights must be balanced against the rights of those attending meetings not to be discriminated against under Article 14, and to receive information without interference under Article 10. We also set out how the UUK guidance breached the public sector equality duty under the Equality Act 2010 insofar as it failed to give due regard to the need to eliminate the discrimination and harassment of women, or the need to advance equality of opportunity, when the guidance was prepared and then issued.

27. As a consequence of the Pre-Action Protocol letter, UUK withdrew its guidance and subsequently drafted new guidance in consultation with the Equality and Human Rights Council that made clear that gender segregation in university events that are not acts of religious worships is unlawful. In a context where there has been increasing attempts by religious fundamentalists of all hues to promote gender segregation in public life, we submit that gender segregation is not a benign development; it is at its most basic, an attempt to create laws and policies based on stereotyped and sexist ideas about women and gender relations. In this case, the HRA was useful not only in challenging the unlawfulness of the UUK guidance but also in promoting a wider human rights-based culture that shows respect for women's rights.

The Law Society and 'Sharia-compliant' guidance (2014)

28. On 13 March 2014, the Law Society issued a Practice Note for solicitors on drafting 'Sharia' compliant wills. The Practice Note, which was drafted with reference to conservative and fundamentalist Muslim 'expert' opinion, purported to provide guidance on 'Sharia' principles which manifestly discriminated against minority women and children born outside of marriage. For instance, it stated:

"… illegitimate and adopted children are not Sharia heirs…The male heirs in most cases receive double the amount inherited by a female heir… Non-Muslims may not inherit at all…a divorced spouse is no longer a Sharia heir…"

29. In our view, not only did the Practice Note not take account of gender equality legislation but it also strayed into the realms of doctrinal advice. As a consequence, SBS wrote to the Law Society requesting that it withdraw the note but the Law society resolutely refused to do so. In a letter dated 4 June 1014, the Law Society stated that it had no intention of withdrawing the Practice Note and that 'no equality and diversity implications' arose from the Practice Note. As a result, in 2014, SBS began legal action by way of a Pre-Action Protocol letter to the Law Society. We argued that the Law Society's note amounted to institutional endorsement of direct gender and other forms of discrimination and contravened equality and human rights law.

30. In the Pre-Action protocol letter, we argued that the Practice Note was issued in violation of the Public Sector Equality Duty ('PSED') under section 149, Equality Act 2010, and that in failing to withdraw it, the Law Society was continuing its breach of the PSED under section 149, Equality Act 2010. We submitted that the Practice Note violated Articles 8 and 14 of the Human Rights Act 1998. By issuing the Practice Note and maintaining it, it was (i) in breach of the positive obligations implicit in articles 8 and 14, Sch 1, HRA and was therefore acting unlawfully (section 6, HRA) and (ii) erred in concluding that though express consideration was given as to whether the Practice Note endorsed values that were against human rights, the Practice Note could not be seen as endorsing any such values. In addition, we stated that there was a real and significant risk posed by the guidance that, if followed, solicitors would find themselves acting in violation of section 29 of the Equality Act 2010.

31. As a result of the threat of legal action and our widely covered campaign, the Law Society eventually withdrew its discriminatory guidance and publicly apologised for having produced the ill-advised Practice Note in the first place. This was an extremely significant outcome since it sent a clear warning to other public bodies contemplating instituting 'Sharia compliant' measures in contravention of equality and human rights law and values.

Emergency funding for domestic abuse survivors during the Covid-19 pandemic (2020)

32. From the outset, the Covid-19 crisis has had a specifically gendered and racialised impact which has since been borne out by emerging evidence and data. Measures announced by the government to respond to the crisis, in particular the lockdown and the direction for people to 'stay at home', also created a context conducive to domestic abuse. For example, over two-thirds of survivors responding to a Women's Aid survey in April 2020 told the national charity that domestic abuse was escalating under the lockdown and 72%

said that their abuser has more control over their life since the crisis. Over three-quarters (78%) of survivors reported that Covid-19 has made it harder for them to leave their abuser. Between 23 March and 3 May, at least 21 women and two children were also killed by their partners or family members. The Metropolitan Police also reported a 24% rise in domestic abuse charges and cautions since 9 March (the date when people with symptoms were asked to self-isolate). Like others, SBS also experienced a rise in demands for assistance as we saw a 17% rise in referrals to our organisation. Whilst domestic abuse and other forms of gender-based abuse affect women and girls across stratifications of ethnicity and socioeconomic status, SBS has long highlighted the fact that both intracommunity factors, as well as structural factors, institutionalise BME and migrant women's marginalisation and place them at greater risk of harm which has increased during the Covid-19 pandemic.

33. In the light of this, we were particularly alarmed by the lack of a government led co-ordinated strategy on violence against women and girls when the lockdown measures were first put into place. There was no crisis response or central planning, which resulted in confusion and chaos on the ground as to what local authorities and services should be providing by way of accommodation and protection to abused women and children.

34. On 27 April 2020, the Public Interest Law Centre, on behalf of SBS, sent a Pre-Action Protocol Letter to the Secretary of State for Housing, Communities and Local Government, concerning the government's failure to take immediate concrete steps to ensure the effective access of victims of domestic abuse to sufficient provision of safe accommodation whilst social distancing measures were in place. This followed an earlier letter that we had sent to the Chancellor of the Exchequer and the Home Secretary on 9 April 2020, urging them to underwrite the costs of hotel and hostel accommodation for abused women who needed safe accommodation during the pandemic. The letter highlighted the fact that within a spate of two or three weeks of the lockdown, 12 women and children had been killed by partners or family members. We also referenced similar schemes that had already been established internationally, including in France and Australia. Our letter was supported by over 30 organisations and was also endorsed by the Deputy Mayor for Policing and Crime. We received no response.

35. In our Pre-Action Protocol letter, we stated that the absence of sufficient safe accommodation and measures to facilitate effective access to such accommodation for those exposed to domestic abuse constituted: a) a failure to take all reasonable steps to implement practical and effective measures to prevent individuals from being subjected to torture, inhuman or degrading treatment or punishment, contrary to Article 3 ECHR;

b) an unjustified interference with the private and family life of victims of domestic abuse and that of their children in breach of Article 8 ECHR and c) a failure to make adequate provision of safe accommodation disproportionately affect victims of domestic violence (who are disproportionately women) and constitutes unjustified discrimination contrary to Article 14 ECHR. We also stated that a failure to monitor and to review the impact of government guidelines on social distancing on victims of domestic abuse victims and to implement immediate measures for protection is unlawful and in breach of the Public-Sector Equality Duty contained in the Equality Act 2015 s 149.

36. On 2 May 2020, two days before a reply to our letter was due, the Secretary of State for Housing, Communities and Local Government announced a £76 million package to support the 'most vulnerable in society' during the pandemic. He stated that a proportion of the fund would go to charities that address domestic abuse. Of that total, £10 million was provided by the Ministry for Housing Communities and Local Government (MHCLG) to distribute to charities that operated domestic abuse safe accommodation services. We were informed that: "Where refuges do not have enough existing capacity to support those in need as a result of domestic abuse the funding will also enable refuges to make available hotels or other temporary accommodation to survivors of domestic violence where they judge it to be safe and appropriate to do so." A further £25m was announced for the Ministry of Justice, and £3m for the Home Office. None of this would have been possible without our attempt to bring legal proceedings that invoked the HRA.

Family and Immigration/Asylum cases

37. In our day-to-day casework, we have also supported women in invoking their human rights in countless family law and immigration cases, where for example, there have been serious incidents involving the abduction or abandonment of mothers and their children. Such cases also often involve the interplay of family and immigration law that engage Articles 6 and 8 ECHR. The following are some examples:

Ms S

38. Ms S was married to her husband, Mr S, in Pakistan in 2004. Following their marriage, she lived with her in-laws in Pakistan and her husband divided his time between London and Pakistan. They had three children, A, B and C. Ms S was subject to considerable domestic violence at the hands of her husband and her mother-in-law. In 2011, under duress and pressure from her husband and in-laws, Ms S agreed to her children travelling to the UK. She was unaware that her husband and his family had decided that the children should live in the UK with their father.

39. In December 2011, Mr S returned to Pakistan with A. In late January 2012, Ms S became pregnant again. In February 2012, B and C were taken to Pakistan to attend a family funeral. At around the same time Mr S pronounced a talaq divorce and he and his family forcibly removed Ms S from the marital home and all her children were removed from her and brought back to the UK. In October 2012 Ms S gave birth to her youngest child, D.

40. Ms S manged to instruct family lawyers in the UK who made a successful application to the High Court in January 2013 for A, B and C (who were all in the UK) to be made wards of court. The High Court also requested that urgent consideration be given by the immigration authorities to permit Ms S to enter the country so that she could participate in family proceedings. Subsequent court orders repeated this request and also emphasised the need for Ms S to have contact with the children. The court was clear that Articles 6 and 8 ECHR rights of the children and their mother were engaged.

41. The Entry Clearance Officer (ECO) however, refused Ms S and D's application to obtain entry clearances to travel to the United Kingdom to be re-united with the other children as he was not satisfied they were 'genuine' visitors. Ms S' immigration solicitor appealed the entry clearance decision to the First Tier Tribunal, arguing that the refusal was in breach of Articles 6 and 8 ECHR. The Tribunal found that the ECO's refusal was not in accordance with the Immigration Rules and also accepted that Ms S and her older children's Article 8 ECHR rights were engaged. The immigration judge was clear that even if he had not found the ECO's decision to be wrong in relation to the Immigration Rules, he would have been satisfied on human rights grounds alone that the refusal for Ms S and D to enter the UK was not a legitimate or proportionate interference with the Article 8 rights of the family.

42. Ms S was therefore able to re-enter the UK and take a full part in the final hearing in 2014, including giving lengthy oral evidence which was vital to the judge's ultimate decision. In this case, the HRA was used to ensure Ms S was able to re-enter the UK and fully engage with family court proceedings. The human rights aspect of Ms S' immigration case was clearly persuasive to the Tribunal judge.

Ms P

43. Ms P was originally from India. During her childhood her care was delegated to her brother and sister-in-aw who were physically abusive towards her. She met and married her husband, Mr P in India in 1998. After their marriage Ms P moved into the matrimonial

home with Mr P and her in-laws. Soon after this Mr P began to physically and verbally abuse Ms P. This abuse continued throughout Ms P's pregnancy and then carried on after her child's birth in November 2001. Despite Ms P's family being aware of the abuse and her unhappiness within the marriage, both they and her in-laws put pressure on her to stay in the marriage. Her family were fearful of the disgrace that a divorce would bring on their reputation and its negative impact on the marriage prospects of her child.

44. In November 2009, Ms P came to the UK on a student visa with her husband as a dependent, whilst their child stayed behind in India with his grandparents. In the UK, Mr P continued to subject Ms P to physical, emotional and sexual abuse.

45. While studying, Ms P met and began a relationship with her current partner, Mr R, who was also an Indian national and in the UK on a student visa. When Mr P discovered the relationship he physically assaulted Ms P and removed her from the family home. Following the separation, he continued to harass and threaten to harm both Ms P and her new partner. Ms P's own family also disowned her for leaving her marriage and threatened to kill her if she returned to India.

46. Ms P and Mr R began to cohabit in 2012. She also had her visa extended until July 2014. However, as a result of her experiences of abuse and estrangement from her family, Ms P developed anxiety, depression and symptoms of Post-Traumatic Stress Disorder. She began to experience suicidal thoughts. Mr R became her primary carer although he also suffered from depression. Both Ms P and Mr R were extremely vulnerable adults.

47. Ms P's immigration solicitor submitted an application for asylum and humanitarian protection, and leave to remain outside the Immigration Rules based on Articles 2, 3 and 8 ECHR. This application was made jointly with Mr R as a dependant of Ms P. Ms P's solicitors argued that she would be at risk of being killed by Mr P, his family or indeed her own family if she was removed to India and as such her Article 2 rights were engaged. It was also argued that the stigma, shame and dishonour that would attach to Ms P as a married woman, who was living with another man, coupled with the lack of adequate access to mental health care in India, would also lead to an Article 3 violation. In addition, it was argued that Mr R and Ms P had established a family life in the UK under Article 8 which they would not be able to maintain if they were removed to India, due to Indian laws which make it illegal for a married woman and a single man to cohabit. It would be impossible for them to be accommodated together and they would face social ostracism and worse.

48. The Home Office rejected these arguments and Ms P appealed to the First Tier Tribunal. At the hearing, the legal arguments mainly focussed on Article 3 ECHR based on Ms P's mental health. The SBS senior advocate dealing with this case (and indeed the judge) took the view that the case was argued on a novel and unusual point. It was argued that due to the significant support Ms P was receiving from her local mental health services, and the concerns set out in her psychiatric report, Ms P's mental health would deteriorate if she was forced to return to India. Further, she continued to be at risk of her family finding her and her partner even if they relocated internally. She was also likely to face social discrimination in finding employment or housing and even prosecution on the basis that under Indian law she would be regarded as having committed adultery. In addition, it was argued that if Mr R who was also her carer was forced to return to India alone, not only would it significantly impact his own mental health but it would cause a rapid deterioration in Ms P's mental health.

49. Ms P's appeal was successful and she and Mr R were granted five years' leave to remain. In this instance, the HRA not only allowed Ms Ps solicitors to bolster her asylum claim with additional human rights arguments supplementing her rights under the Refugee Convention, it also allowed for a novel and unusual argument to be made based on Ms P's very specific circumstances as a victim of domestic violence in receipt of vital mental health services.

Ms T

50. Ms T grew up in Nigeria. Her father died at a very young age and her uncle took over her care. He sexually, physically and emotionally abused Ms T who was also forced to undergo FGM. When she was 14, her uncle forced her into a marriage with a much older man, who was already married and was very violent towards her.

51. Terrified for her life and desperate to escape, Ms T befriended Mr J, a neighbour, who offered her to help her but then took her to Lagos and sexually exploited her. She was eventually trafficked to the UK. Once here, she was placed under immense pressure by Mr J to have sex with his friends 'in return' for having brought her to the UK. As Ms T was isolated, had no money and her immigration position was insecure, she had no choice but to stay with Mr J.

52. Eventually Ms T became pregnant but the father of her child refused to take responsibility and claimed that the child was not his. He physically abused Ms T, which included attacking her with a belt when she was 7 months' pregnant. He also moved Ms T into shared accommodation with another tenant who threatened and molested Ms T during

an incident involving the tenant, the police were called but Ms T was too frightened to progress matters as she was fearful that she would be deported.

53. Eventually, in desperation, Ms T obtained advice from an immigration solicitor who also sexually and financially exploited her and submitted an inadequate and inaccurate asylum application to the Home Office which was refused. Ms T developed serious mental health problems and in 2013 was diagnosed with Post-Traumatic Stress Disorder and severe depression linked to psychotic symptoms and delusions.

54. Ms T was ultimately able to obtain support from SBS and the Helen Bamber Foundation and was assisted in obtaining immigration advice. She was advised that she had a strong asylum case but she was too terrified to engage in the proceedings. Her psychiatrist advised that she was not able to give an interview or engage in the proceedings without it leading to significant distress that "would likely trigger traumatic flashbacks". Her solicitor therefore decided to make an application on the basis that that her son had lived in the UK for almost 7 years and that as the parent with sole care of the child she should not be removed. It was also argued that Ms T and her son had established a family life under Article 8 ECHR and that it would be a disproportionate and unnecessary interference of that right to remove them. It was also argued that as Ms T was being supported in the UK by a number of professionals which she would not have access to in Nigeria, removal would significantly impact on her mental health and place her at high risk of harm (including suicide) and further sexual exploitation. What is clearly evident in this case is that Ms T had a legitimate and deep-seated fear about going through the asylum process but she was able to rely on the HRA to find another route to settlement that was less traumatic and detrimental to her mental health.

Ms A

55. Ms A came to the UK as a visitor in September 2013. Her niece, C, a child, was placed in foster care with white British carers after C's mother was detained in hospital under the Mental Health Act. Ms A wished to care for her young niece, or at least have meaningful and regular contact with her. C's welfare needs relied on having ongoing involvement of a close family member who shared her cultural background. On this basis, Ms A sought to remain in the UK permanently. However, at the time, Ms A was not perceived to be the primary carer of C because C did not live with her and Ms A did not have a child arrangement order for residence. She was instead regarded as having a unique 'pastoral' role but this meant that there was no in-country application she could make under the Immigration Rules.

56. The local authority had applied for a care and placement order in respect of C, with a plan that C would be adopted and would not have any further contact with Ms A. Ms A challenged this within the care proceedings stating that she should have an ongoing role in C's life, which would not be possible if C was adopted. However, the family court sought clarity over Ms A's immigration status before making any orders.

57. Ms A's immigration lawyer made an application for Ms A to remain in the UK outside the Immigration Rules on the basis of Article 8 ECHR. He submitted that Ms A should be granted leave to remain outside the Immigration Rules and that the right to family life should not be defined narrowly in terms of whether a person has contact with, or residence of a child. He argued that the immigration authorities should also recognise the cultural and emotional support provided by Ms A in C's life, notwithstanding that she did not live with the child who was settled, and may not be able to do so. The Home Office refused the application. However, Ms A's family lawyer persuaded the family court not to make a negative decision based on Ms A's unclear immigration status, and that it should instead give consideration to Ms A and C' Article 6 ECHR rights to have a fair hearing, which entailed adjourning the substantive decision in order to obtain further evidence from the immigration lawyer on the likelihood of a successful appeal against the Home Office's decision.

58. The family court ultimately recognised the Article 8 argument in the context of the care proceedings and agreed a contact plan between C and Ms A, to be assessed and reviewed on a regular basis. The Home Office was then compelled to review and eventually reverse its decision to refuse Ms A's application to remain in the UK outside of the Immigration Rules.

59. The crucial aspect of this case is that C benefited from the presence of Ms A and the role she played in providing specific cultural and family support in order to meet C's physical and emotional needs. Without the HRA, C might have been adopted by strangers and deprived of maintaining a close and loving relationship with a family member.

Third Party Interventions

60. In the wake of the HRA, we have also been able to make third party interventions in appropriate cases that have wider significance for the rights of women and BME women in particular. It is a strategy that has enabled us to give voice to those who would not otherwise be heard. Whilst third party interventions are not a new concept nor a creation of the HRA, the language, culture and framework of the HRA has helped us think creatively

about assisting women, bring scrutiny to bear on unlawful policies and raise issues that are of significant public concern. The following are some examples where we have intervened in cases that invoke the HRA:

R (Quila and another) v Secretary of State for Home Department [2011] UKSC 45

61. SBS intervened in the above case at the Supreme Court, regarding the government's prohibition on non-EU spouses entering the UK if they or their sponsor were under the age of 21. At the heart of the Supreme Court case was the question: was the raising of the minimum age for marriages to an overseas spouse a lawful way of addressing the 'widespread problem' of forced marriage? The appeal concerned two nationals from Chile and Pakistan; both had married British citizens and had sought entry clearance to join their British spouses in the UK but were refused because they were both under 21 years of age. Their challenge was against this refusal which appeared irrational in a context where the Home Secretary had accepted that neither couple were the subject of a forced marriage. Both couples were eventually allowed to enter the UK, but the question of whether the decision to raise the permissible age was a proportionate and justifiable response to forced marriage remained a live legal issue.

62. In our intervention which was accepted by the Supreme Court, we argued that there was little evidence to support the assertion that the 21 year 'age policy' would have any impact on the number of forced marriages. Further, we argued that it would result in an unjustified and disproportionate interference with the Article 8 ECHR right to family life of genuine couples to live together, whilst simply driving the problem of forced marriage 'underground'. Moreover, we suggested that the rule would have a discriminatory effect in that certain forms of relationship would be treated less favourably than others due to their foundation, which may arise as a result of cultural or familial factors. For example, a genuinely arranged marriage between two fully consenting adults over 18 but under 21 was likely to be caught by the rule, and it could therefore impact disproportionately on South Asian couples. We argued that a unilateral and blanket provision in circumstances where it is widely known that there are a variety of often very complex motivations for forced marriage would make it difficult or at the least tenuous, to justify such a policy. Our experience of working on issues of forced marriage tells us that entry into the UK has little to do with it: the overriding motives usually involve the need to maintain control over female sexuality; to punish those who are perceived to have transgressed cultural and religious norms; or to provide a 'cure' or 'cover' for disability and homosexuality, considered taboo in many South Asian communities in the UK. We were therefore able here to use our considerable experience to demonstrate the unintended human rights consequences of poorly evidenced policy-making

63. The Supreme Court agreed that the 'age policy' was a disproportionate interference with the appellants' Article 8 ECHR rights. Our credibility and human rights arguments were, we believe, strengthened by our acknowledged expertise in the area of forced marriage and immigration. The judgment is available here: https://www.bailii.org/uk/cases/UKSC/2011/45.html

Commissioner of Police of the Metropolis v DSD & Anor [2018] UKSC 11

64. We would like to emphasise how vitally important the introduction of the HRA has been in our attempts to challenge unacceptable inconsistencies in law enforcement by the police across the country in respect of violence against women and girls. The body of case law from the ECHR in respect of enforceable rights where state bodies have failed to protect women and girls from gender-based violence has been critical in this respect. Much of this law relates in particular to the positive obligations under Articles 3 and 4 ECHR, that require the state has to prevent loss of life or serious harm by putting into place effective criminal laws and a criminal justice system for the investigation of serious crimes of violence committed by non-sate actors. In the UK, the emerging body of ECHR law and the HRA has enabled the families of women who have been killed in circumstances where the risk of harm was known to the police, to seek redress and accountability for the failure of the police to take women's accounts of gender-related abuse seriously.

65. In 2018, SBS, as part of a group of interveners, sought and gained permission to intervene in the case of *DSD and another v Commissioner of Police of the Metropolis* [2015] EWCA Civ 6, in which the police was seeking to appeal to the Supreme Court. The appeal concerned the scope and content of the investigative obligation imposed on the state by Article 3 ECHR in circumstances where an individual is the victim of a crime that constitutes inhuman and degrading treatment, perpetrated by a non-State actor. Both Respondents in this case were victims of rape by the driver of a black cab who committed multiple sexual offences with the same modus operandi but who was not apprehended by the police despite a clear pattern in his crimes. The issue at the heart of the appeal concerned the steps the police are required to take in response to allegations of rape and violence against women. The police argued that they had no actionable legal duty to investigate serious crimes of violence against women. Yet the victims of the serial rapist were seriously let down by a catastrophic litany of failures in the police's investigation into their reports of rape. But for these failings, the rapist would have been caught earlier and countless women would have been protected. In addition, it was argued that

gendered forms of violence, such as domestic and sexual violence, will engage, in addition to Article 3 (and often Articles 2 and 8), Article 14, imposing positive equality obligations on the State.

66. The outcome of the case was vital to our ongoing campaign to hold the police and other parts of the criminal justice system accountable in law for serious failures in their investigation of crimes of domestic and sexual abuse. We were also keen to advise the court on the perspective of BME women and their particular experiences of state responses to sexual violence, in a context where they already struggle to disclose such abuse. Sexual violence is rarely viewed from a woman's point of view and where a woman is sexually assaulted or raped, she is frequently blamed for having 'brought it upon herself' by her 'transgressive' behaviour. Our intervention sought to highlight the broader human rights issues against which this appeal was being heard; the prevalence of sexual violence against women, the implications for BME women and our particular experiences of police failures to conduct effective, impartial and ECHR compliant investigations into allegations made by women.

67. The Supreme Court upheld the right of women to sue the police for their failure to investigate rape and other serious crimes of violence. In an unequivocal and clear judgment, the Supreme Court unanimously accepted that under the HRA there is an actionable duty on the police to investigate crimes of serious violence. It was a significant judgment that reminds us of the importance of the HRA in asserting fundamental rights and freedoms. It makes it absolutely clear that the police owe a duty not just to the public, but to individuals, to protect them from, and investigate, very serious crimes. Where they fail in that duty there will be scrutiny on police failings. The judgment is available here: https://www.bailii.org/uk/cases/UKSC/2018/11.html

68. More widely, the impact of the HRA has helped to create more awareness of the need to protect vulnerable women and girls and to prevent such violence from occurring in the first place. The HRA has helped to foster a culture in which violence against women and girls is increasingly seen as unacceptable.

Re K (Forced Marriage: Passport Order) [2020] EWCA Civ 190

69. In 2020, SBS intervened in the above forced marriage case at the Court of Appeal to assist the court in determining the correct approach to take when granting forced marriage protection orders. The background to this case is that in 2015, a family court granted the police a Forced Marriage Protection Order (FMPO) on an emergency basis to protect an adult (K), with mental capacity who was deemed to be at high-risk of forced marriage.

The fear was that she would be taken to Pakistan by family members for the purpose of a forced marriage. Prior to the granting of the forced marriage order, she had been assaulted by her family and threatened with violence and even death. The court also ordered that her passport be retained to protect and prevent K from being taken out of the country. Over the next four years, K repeatedly asked for the FMPO to be discharged and her passport returned to her. She stated that she was not at risk of forced marriage and that the retention of her passport for an indefinite period in particular, went against her express wishes and feelings and constituted an unjustifiable interference with her human rights including her right to liberty. However, the police maintained that she continued to be subject to coercive control and familial pressure, and could come to serious harm if the restrictions were lifted.

70. K's case concerned the potential conflict between the need to protect an individual under Article 3 ECHR and the need to respect the right to private and family life under Article 8 ECHR. SBS intervened to ensure that all victims of forced marriage are properly protected by the state, through all public authorities, including but not limited to the court. Our submission stated that when considering what protection should be put in place for victims in what is near universally by definition a family setting, the family court has to undertake a sensitive and careful balancing exercise. The issue in such cases is not whether there should be state intervention, but rather what that intervention should be, taking into account human rights considerations and the victim's standpoint and views. Where the court's obligation to protect a victim does not conform with the victim's expressed wishes, the court must be particularly careful as to how it evaluates the evidence and reaches a conclusion as to what, if any, protective orders should be put in place. SBS was anxious to ensure that the right balance was struck between protecting a victim from forced marriage (SBS's primary concern), whilst also ensuring that a victim retains her autonomy and voice in the process of rebuilding her life, as far as is possible.

71. In our intervention, we submitted that a number of potential human rights were engaged, namely Articles, 3, 5 and 8 ECHR. We submitted that in the circumstances of a forced marriage case, if there is evidence that a victim is at risk of forced marriage, the court must act very cautiously to ensure that: a) the victim's Article 3 rights are not breached, (a forced marriage is inhuman or degrading treatment or punishment). Article 3 imposes on the state a positive obligation to protect people from the harm which others may do to them and the state has a duty to do what is reasonable in all the circumstances to protect people from a real and immediate risk of harm. Further, Article 3 is an absolute right and it is not to be balanced against other rights; b) in ensuring that there is no Article 3 breach, the court can and should put in place protective orders, as part and parcel of its

obligations under Part 4A, Sections 63A and 63B of the Family Law Act 1996, even if those protective orders lead to a breach of other rights; c) in a case where a victim's passport is being retained, it is arguable that such a retention does not amount to a breach of Article 5. If this is correct, then the court will still need to consider issues of liberty and rights under EU law in respect of freedom of movement, but should be able to curtail liberty and/or freedom of movement in circumstances where absent such curtailment there is a risk of an individual's Article 3 rights being breached. If this is not correct, and Article 5 does not apply, we submitted that the court should still ensure that Article 3 rights are protected, even if this leads to a breach of Article 5 rights; d) Article 8 - retaining a passport may be viewed as a disproportionate interference in the private and family life of a victim but this right has to be balanced against a potential breach of that victim's Article 3 rights.

72. SBS also invited the Court of Appeal to give guidance as to the overall approach that the family court should adopt when considering FMPOs, and made suggestions for such guidance. The final judgment recognised the contribution of SBS' intervention and the need to accommodate Article 3 and Article 8 rights as they are likely to be at the centre of most, if not all, FMPO cases. The Court handed down guidance on how family courts should approach the granting of forced marriage protection orders (FMPOs). The judgment is available here: https://www.bailii.org/ew/cases/EWCA/Civ/2020/190.html

Suicide and domestic violence

73. Suicide and self-harm are significant issues facing BME women experiencing gender-based violence. SBS' experience supported by research shows that that the rates of suicide and self-harm for South Asian women in particular, are up to three times the national average when compared to women in the general population. As a result, over the last 40 years, SBS has been involved in supporting a number of bereaved families of women who have died in suspicious circumstances or who have committed suicide due to domestic abuse, forced marriage or other forms of gender-related harm.

74. SBS has supported families to use the inquest system to seek a more detailed examination of the context of domestic abuse in which women die and to raise awareness in BME communities and the wider society of the close links that exist between gender-related violence and suicide or suspicious deaths. We often help bereaved relatives and friends to obtain legal advice, as well as support them through the inquest process. The majority are desperate to know what happened to their loved ones and to ensure that the domestic abuse that a woman may have been subjected to is foregrounded. However, in a great many cases, with the odd exception, most coroners are reluctant to address the

issues of domestic abuse and other similar underlying causes behind the suicides or suspicious deaths of such women. Although, in our experience, coroner's courts have been reluctant to investigate the history of domestic abuse that a woman may have suffered prior to her death/suicide, we have persisted on the basis that any reference to such history can have a powerful impact on wider community values that all too often, prevent women from seeking help and protection in respect of the abuse.

75. SBS has also on occasions intervened as an interested third party in inquest hearings involving South Asian women mainly to provide expert evidence and to obtain appropriate public policy recommendations from coroners to prevent such deaths from occurring in the future. In such cases, the HRA provides an opportunity to turn the spotlight on the traditionally limited and somewhat arcane arena of the coroner's courts. The following two cases, show how the HRA is critical to our interventions:

Nazia Bi (2002)

76. Nazia and her daughter died in a fire in a locked room in the marital home on 18 March 1999. Nazia B suffered from prolonged domestic violence from her husband. There was evidence that she was planning to flee the marital home with her two year old daughter and had made arrangements to do so around the time of her death. There was no dispute that the fire was started deliberately. Before she died she made a 999 call stating *"…fire in my room…my husband burned me, please help me".* Choking sounds and the voice of a crying child could be heard in the background.

77. Nazia's husband was charged with murder but the Magistrates' Court said there was insufficient evidence to commit him to the Crown Court and discharged the case. The Crown Prosecution Service obtained a bill of voluntary indictment so that the matter could be considered by the Crown Court. An inquest was opened but adjourned until after the criminal trial.

78. At the Crown Court trial in July 2000, a number of witnesses suggested that Nazia had started the fire herself and disputed claims that she was unhappy in the marriage. One of these witnesses was Nazia's sister, who then married Nazia's husband. At the trial, the judge also ruled that Nazia's 999 call was inadmissible. The Crown offered no evidence and not guilty verdicts were entered.

79. Following the criminal trial, SBS wrote to the relevant coroner in September 2000 asking for the circumstances of the deaths to be fully investigated, referring to the public interest in having such deaths investigated and also explaining the experience of SBS in working

with BME women when dealing with such issues. The coroner repeatedly refused to recognise SBS as an interested party and disputed SBS' assertion that it was in the public interest to resume the inquest. In December 2001 the coroner's office confirmed the inquest would not be resumed, compelling us to bring judicial review proceedings against the coroner's decision.

80. We submitted that the Coroners Act had to be read compatibly with Articles 2 and 3 ECHR which meant that the state was not only obliged to take positive steps to prevent ill treatment/fatal violence where it had knowledge or ought to have had knowledge of its occurrence, but that it was also obliged to investigate such conduct in its aftermath, identify the perpetrators and prevent re-occurrence of such acts. Further, we submitted that ECHR case law stated that where the deceased came from a recognised vulnerable social group (in this case, an Asian woman who was also a victim of domestic violence), ECHR standards should be applied particularly generously. We also made submission suggesting that SBS should be recognised as an interested party to ensure that the inquest process complies with the ECHR principle that Convention rights should be secured in a practical and effective manner. We argued that SBS had expertise of the complex cultural issues involved in such cases and could assist the coroner to conduct a 'sufficient inquiry'.

81. Although the High Court eventually refused permission for the judicial review application, it recognised that SBS did have standing to bring judicial review proceedings and the wider publicity surrounding the case did help to create awareness about the links between domestic abuse and suicide in South Asian communities.

Assa Devi Padan (2000/2001)

82. Assa was a 45 year old woman who was found hanging in her garage, by her teenage son in June 2000. Her three children had witnessed the abuse on their mother by their father and had been subject to significant abuse themselves. Assa had also disclosed her husband's physical and sexual abuse to her adult daughters. All of her children saw physical injuries on their mother on a number of occasions. During a trip to India, Assa disclosed the abuse to her family but fell under great pressure to save her marriage. Her husband had also threatened to push her under a train.

83. At the time of her death, her husband had commenced divorce proceedings and been open about his intention to return to India to re-marry. Assa's children felt that their mother's death was not suicide and that their father had been involved. They therefore sought help from SBS. We assisted the family to obtain legal advice and representation for Assa's inquest hearing. Counsel for the children argued that Articles 2, 3, 8 and 14

ECHR should apply to the coroner's investigation of 'how' the deceased came to her death. It was argued in particular that Article 2 meant that investigations into suspected deprivations of life must be thorough, effective, impartial and careful. In addition, counsel argued that where there is prima facie evidence of torture or inhuman or degrading treatment or punishment that relates to the circumstances of death, then a failure by an inquest to effectively investigate that will be a breach of Article 3 ECHR and s.6 of the HRA. It was further argued that if the Coroners Act was read compatibly with the ECHR, it was open to the coroner to consider an additional possible verdict of suicide/accident aggravated by inhuman and degrading treatment or punishment.

84. Ultimately however, although the coroner accepted Assa's experiences of domestic violence, he failed to appreciate the consequence of this (suggesting women may provoke men to violence). He also failed to recognise shame and dishonour as concepts that have a particular significance for Asian women by suggesting this was a concept also found in the history of British aristocracy. He returned a verdict of suicide but did invite SBS to make a submission to the Home Office in relation to the remit of coroner's courts in relation to suicide.

85. In both the inquests, the HRA was used to draw attention to the need to ensure that the law concerning inquests needs to be read in conformity of the HRA. These cases also demonstrate how the HRA can extend the scope of the coroner's duty. Although we are not there yet, the HRA has been extremely important as tool for us in this respect; it has enabled us to widen the scope of the coroner's inquiry in such suicide cases, thus allowing a broader and more extensive search for the truth and justice for bereaved families and interested parties.

Who fills the vacuum if the HRA is weakened?

86. We are concerned about other devastating consequences of a weakened HRA for the women that we work with.

87. In recent years, we have seen a rise demands from conservative and fundamentalist religious groups in BME communities to be allowed to mediate 'private' family matters through religious based 'courts' and 'tribunals' in accordance with religious codes or 'Sharia' law'. Such arguments often place reliance on the right to 'freedom of religion' and the need for communities to solve their own problems internally. Many influential political and other public figures have appeared to positively support such 'tribunals' in the name of religious freedom. The demands have also gained traction in a context where austerity cuts including huge cuts to legal aid have left many vulnerable people without

access to justice. Our concern however, is that forces of the Religious Right has stepped into the vacuum created by the loss of access to the welfare state and the formal legal system.

88. Over the years, we have provided numerous briefings to Parliament and other official inquiries and hearings on community and religious based systems of arbitration. We have argued that religious arbitration/mediation in family matters - whether formal or informal - are detriment women's human rights and should be held to be unlawful. We have raised concerns about the rise of so called Sharia councils, 'tribunals' and 'courts' that purport to arbitrate on family matters and dispense 'justice'. Our extensive experience and growing evidence shows that that these forums are highly discriminatory towards women both in terms of their decisions and processes. Many tribunals favour a man's evidence over a woman's and do not even require men to appear before the tribunal but direct that women to do so and to also pay a fee for the 'services' provided.

89. On a routine basis, women who come to our doors recount how these religious forums only grant a woman religious divorce if she agrees to forgo her legal rights to martial property and/or financial settlement and/or to her children, following a divorce. In such forums there is usually no consideration of risk or the needs and welfare of women or children. Domestic violence is never taken seriously. For instance, one woman was told by a Sharia council that she should be 'patient' with regards to her husband's abuse and that she would achieve justice 'in heaven'.

90. The decisions of these 'tribunals' and 'courts' with regards to family matters are not legally binding unless and until a family court approves a consent order containing the decision. However, the reality is that the very social, cultural and religious pressures that lead women to engage in such forums are the very reason why they are unlikely to bring the scrutiny of the family court to bear on such agreements and whilst not 'legally binding' women are in every other respect bound by them.

91. We have also made the point that the very existence and remit of such 'parallel legal systems' undermines the principles of equality before the law, non-discrimination and protection - all of which underpin not just the ECHR but all international human rights instruments. The State's sanctioning of such parallel legal systems amounts to a breach of the state's obligations under Articles 2, 3, 4, 6, 8 and 14 ECHR. It is in this context that we submit that the HRA has a pivotal role to play in providing the legal tools and language by which to challenge such dangerous developments.

92. In our view, the universality, non-divisibility and non-discriminatory nature of ECHR rights are critical and should be available to all people regardless of their background. We have been able to use the HRA effectively in our advocacy and campaigns for the better protection of a particularly vulnerable group of women who would otherwise be denied access to justice.

Southall Black Sisters

12 March 2021